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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,353	12/21/2001	Daniela Giacchetti	05725.0979-00	4662

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EXAMINER

PASS, BARRY

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,353

Applicant(s)

GIACCHETTI ET AL.

Examiner

Barry Pass

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-16, 18, 22-26, 31-33 and 34-47, 49, 51-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Apple Corps (1999). Apple Corps discloses an electronic system and method for simulating use of an esthetic feature on a simulated facial image; operating over a network; storage of a facial construction program on a computer readable medium with instructions for use; a two-dimensional display for the facial simulation; selection of a plurality of aesthetic and facial features including a beauty product, eyeglasses, eyes, nose, etc.; models for selection of an external body condition, including skin conditions; overlays for models of a body condition; selection of an article of clothing; selection of differing heads; selection of hair for a facial image; choice of hair color; selection of facial color; altered facial images available for recall.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 17, 20-21, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apple Corps in view of Utsugi US 6,502,583. Apple Corps discloses the system and method for simulating use of an esthetic feature on a simulated facial image recited in claims 1 and 34 but does not teach coloration of features. Utsugi teaches (abstract, columns 3-4, 7) a system and method of altering face image and makeup simulation with alteration of skin tones and coloration and selection of colors for body features, and representations of body conditions. Accordingly, it would have been obvious to someone of ordinary skill in the art at the time of invention to include in any system and method for simulation of feature changes in the face or any body part as taught by Apple Corps the capacity for alteration of skin tones and coloration and selection of colors for body features as taught by Utsugi.

6. Claims 19, 27-30, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apple Corps in view of Lindford et al. US 6,081,611. Apple Corps discloses the system and method for simulating use of an esthetic feature on a simulated facial image recited in claims 1

and 34 but does not teach selection of eye color, altering of an individual's facial image based on self-evaluation and simulation of the process of applying the feature changes. Lindford et al. teach (abstract, Figs. 14A-D, 15A-C, 16, 17, 18A-B, 20) an esthetic imaging system and method for editing digital images to enable individuals to assess possible esthetic changes to their body including eye color; a computer readable medium with instructions for use, for simulating use of an esthetic feature on a simulated facial image in a two-dimensional display; selection of aesthetic and facial features; templates for selection of an external body condition, including skin conditions; templates for a selected body portion. Accordingly, it would have been obvious to someone of ordinary skill in the art at the time of invention to include in any system and method for simulation of feature changes in the face or any body part as taught by Apple Corps the capacity for simulation of any change in a body feature as taught by Lindford et al.

7. Claims 1-16, 18, 22-26, 31-33 and 34-47, 49, 51-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose US 5,930,769 in view of Lands' End My Model (April, 2001). Rose (abstract, columns 1-2, Figs. 1-5) and its Lands' End Internet web site implementation teach an electronic system and method operating on a network for simulating use of an esthetic feature on a simulated body image; storage of a facial construction program on a computer readable medium with instructions for use, a two-dimensional display; selection of a plurality of body and facial features; templates for a selected body portion; selection of an article of clothing; selection of differing heads; selection of hair for a facial image; selection of hair color; selection of facial color.

8. Claims 17, 20-21, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose in view of Lands' End further in view of Utsugi. Rose and Lands' End disclose the system and method for simulating use of an esthetic feature on a simulated body part as recited in claims 1 and 34 but do not teach coloration of features. Utsugi teaches (abstract, columns 3-4, 7) a system and method of altering face image and makeup simulation with alteration of skin tones and coloration and selection of colors for body features, and representations of body conditions. Accordingly, it would have been obvious to someone of ordinary skill in the art at the time of invention to include in any system and method for simulation of feature changes in the face or any body part as taught by Rose and Lands' End the capacity for alteration of skin tones and coloration and selection of colors for body features as taught by Utsugi.

9. Claims 19, 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose in view of Lands' End further in view of Lindford et al. Rose and Lands' End disclose the system and method for simulating use of an esthetic feature on a simulated body part as recited in claims 1 and 34 but do not teach selection of eye color, altering of an individual's facial image based on self-evaluation and simulation of the process of applying the feature changes. Lindford et al. teach (abstract, Figs. 14A-D, 15A-C, 16, 17, 18A-B, 20) an esthetic imaging system and method for editing digital images to enable individuals to assess possible esthetic changes to their body including eye color; a computer readable medium with instructions for use, for simulating use of an esthetic feature on a simulated facial image in a two-dimensional display; selection of aesthetic and facial features; templates for selection of an external body condition, including skin conditions; templates for a selected body portion. Accordingly, it would have been obvious to someone of ordinary skill in the art at the time of invention to include in any system and method

for simulation of feature changes in the face or any body part as taught by Rose and Lands' End the capacity for simulation of any change in a body feature as taught by Lindford et al.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Eyeglasses.com enables simulated use of a plurality of eyeglass styles on stored images of an individual.

Adobe PhotoShop™, a well-known computer graphics software program, enables the user to scan in an image of a body part and alter any aesthetic feature on a stored image of any part of the body in any manner, including eye color, skin tone and hair color.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry Pass whose telephone number is (703) 305-0726. The examiner can normally be reached on Monday-Friday, 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef can be reached on (703) 308-3256. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0758 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.

Barry Pass *BP.*
May 30, 2003


Marvin M. Lateef
Supervisory Patent Examiner
Group 3700